

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DONALD C. HUTCHINS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action: 04-30126-MAP
)	
CARDIAC SCIENCE, INC.,)	
)	
Defendant.)	

**DEFENDANT COMPLIENT CORPORATION'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR RELIEF FROM SUMMARY JUDGMENT**

The Motion for Relief from Summary Judgment (the "Motion") filed by Plaintiff, Donald C. Hutchins ("Hutchins"), should be denied. Hutchins claims that the Court's order of summary judgment to Compliant, entered on September 29, 2006, should be reversed pursuant to Rule 60(b)(2) of the Federal Rules of Civil Procedure. Hutchins' Motion fails to meet the standards for relief set forth in Rule 60(b)(2). Indeed, the Motion simply rehashes arguments Hutchins has made time and again which this Court has repeatedly rejected.

In alleged support of his Rule 60(b)(2) Motion, Hutchins claims that there exists "newly discovered evidence" that warrants reversal of the grant of summary judgment to Compliant. Hutchins then refers to Aristotle Corporation, alleged misrepresentations of Cardiac Science's counsel, and the Court's reversal of its order of summary judgment to Cardiac Science. However, none of these issues has any bearing whatsoever on the Court's order of summary

judgment to Compliant. Further, all of this “newly discovered evidence” is “anything but” because all of it was before the Court at the time it granted summary judgment to Compliant.

Hutchins also claims to satisfy Rule 60(b)(2) on the alleged grounds that the litigation between Compliant and Hutchins in the State of Ohio is on appeal and, further, is pending before the United States District Court for the Northern District of Ohio. In addition to the fact that this argument would not warrant relief under Rule 60(b)(2), it is false. While Hutchins recently attempted to both appeal and remove the Ohio case, both efforts were rejected. See Exhibits A and B.

In addition to the “newly discovered evidence” Hutchins alleges, he also claims that numerous genuine issues of material fact exist. Hutchins has repeatedly raised these very issues to the Court on numerous occasions. Hutchins filed a plethora of documents in opposition to Compliant’s Motion for Summary Judgment (e.g., Motion for Jury Trial filed on January 6, 2006), he filed his own Motion for Summary Judgment, he raised these issues at oral argument, and he filed a Motion for Joinder of CPR LP. All of these filings address the arguments Hutchins raises in his Motion and were made -- and rejected -- prior to the Court’s entry of summary judgment to Compliant

For the foregoing reasons, Compliant requests that the Court deny Hutchins’ Motion for Relief from Summary Judgment.

Respectfully submitted,

/s/ Colleen Moran O’Neil
 WILLIAM E. COUGHLIN (0010874)
 COLLEEN MORAN O’NEIL (0066576)
 CALFEE, HALTER & GRISWOLD LLP
 1400 McDonald Investment Center
 800 Superior Avenue
 Cleveland, Ohio 44114
 (216) 622-8200
 (216) 241-0816 (facsimile)

JOHN J. EGAN (151680)
EGAN, FLANAGAN & COHEN, P.C.
PO Box 9035
67 Market Street
Springfield, MA 01102-9035
(413) 737-0260
FAX (413) 737-0121

Attorneys for Defendant
Compliant Corporation

CERTIFICATE OF SERVICE

I certify that, on October 31, 2006 I electronically filed a copy of the foregoing Defendant Compliment Corporation's Memorandum in Opposition to Plaintiff's Motion for Relief from Summary Judgment and that parties to the case, registered with the Court's electronic filing system, will receive electronic notice of such filing. A copy of the foregoing was also served upon the following via first-class U.S. mail on today's date:

Donald C. Hutchins
1047 Longmeadow Street
Longmeadow, Massachusetts 01106
Pro Se

/s/ Colleen Moran O'Neil
One of the Attorneys for Defendant
Compliment Corporation